

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: J-0044-13
Cathy McCoy,)	
Employee)	
)	Date of Issuance: March 13, 2013
v.)	
)	
)	
District of Columbia Public Schools,)	
Agency)	
_____)	Arien P. Cannon, Esq.
Cathy McCoy, Employee, <i>Pro se</i>)	Administrative Judge
Carl K. Turpin, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Cathy McCoy (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on January 11, 2013, contesting her Impact score and rating that she received from the District of Columbia Public Schools (“Agency”). Agency filed its Answer on February 14, 2013. After an initial review of the record, Employee’s Petition for Appeal indicated that this Office may not have jurisdiction over this matter. An order regarding jurisdiction was issued by the undersigned on February 8, 2013, ordering Employee to set forth reasons why OEA may exercise jurisdiction over this matter. Employee did not respond to this Jurisdiction Order by the February 25, 2013 deadline. A Show Cause Order was then issued on February 28, 2013, instructing Employee to submit a statement of good cause for her failure to timely respond to the Jurisdiction Order. Employee was required to submit a statement of good cause by March 7, 2013, and as of the date of this decision, has failed to do so. The record is now closed.

JURISDICTION

As will be explained below, the jurisdiction of this Office has not been established.

ISSUE

Whether OEA may exercise jurisdiction over Employee's appeal.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

There is a question as to whether OEA has jurisdiction over Employee's appeal. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

- (a) An employee may appeal [to this Office] a final agency decision *affecting a performance rating which results in removal of the employee . . .*, an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . . (emphasis added).

OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to OEA Rule 628.1, the burden of proof is defined under a 'preponderance of the evidence' standard. Preponderance of the evidence means "[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue."

Pursuant to OEA Rule 604, 59 DCR 2129 (March 16, 2012) this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) *A performance rating which results in removal of the employee* (emphasis added);
- (b) An adverse action for cause which results in removal;
- (c) A reduction in grade;
- (d) A suspension for ten (10) days or more;
- (e) A reduction-in-force; or
- (f) A placement on enforced leave for ten (10) days or more.

This Office has no authority to review issues beyond its jurisdiction. In the instant case, Employee is appealing her 2011-2012 IMPACT score and rating. This rating did not result in the removal of Employee from her position as a teacher within Agency. Accordingly, I do not find that Employee has met her burden of proof in establishing that this Office may exercise jurisdiction over her appeal.

OEA Rule 621.3 further provides that "if a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant." Failure of a party to prosecute an appeal includes, but is not limited to, failure to:

- (a) Appear at a scheduled proceeding after receiving notice;
- (b) Submit required documents after being provided with a deadline for such submission; or
- (c) Inform this Office of a change of address which results in correspondence being returned.

In the instant case, Employee was warned that the failure to submit a brief regarding jurisdiction could result in sanctions at set forth in OEA Rule 621.3. Employee failed to submit a written brief in response to the Jurisdiction Order issued on February 8, 2013. Employee also failed to provide a Statement of Good Cause on or before March 7, 2013, to explain her failure to submit a brief. Based on the foregoing, I find that Employee's lack of diligence in pursuing her appeal before OEA constitutes a failure to prosecute and serves as alternative grounds for the dismissal of this matter.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's appeal is DISMISSED for lack of jurisdiction.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge